

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

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 In re: VEHICLE TRACKING AND) MDL No. 11-2249 (DWF/SER)
 SECURITY SYSTEM ('844) PATENT)
 LITIGATION)

)
) St. Paul, Minnesota
 This Document Relates to) September 12, 2012
 All Actions) 10:15 a.m.
)

BEFORE **THE HONORABLE DONOVAN W. FRANK**
 UNITED STATES DISTRICT COURT JUDGE

PRETRIAL STATUS CONFERENCE

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P R O C E E D I N G S

IN CHAMBERS CONFERENCE ROOM

THE HONORABLE JUDGE DONOVAN FRANK: In the interest of a good record and out of respect to the lawyers who have come here, we will just make a record as we would in the courtroom. We are just going to make a short record to confirm what we discussed, much like we did the last time we were together.

And we can start -- well, Mr. Anderson, do you want to start with you and go right around the room?

MR. ANDERSON: Alan M. Anderson for PJC Logistics.

MR. FARNEY: Brian Farney for PJC Logistics. Jose Recio for Toyota Motor Sales. James Barney for Toyota Motor Sales. Michael Florey from Fish & Richardson for Xata and the the Xata Customer Defendants.

MR. DESAI: Sam Desai from Frommers, Lawrence & Haug for FleetMatics and SageQuest.

Good morning. Dan Conrad with Jones Day, and I am here on behalf of Hyudai Motors of America.

MR. DOYLE: Good morning. Scott Doyle with Shearman & Sterling, and I am here on behalf of Mercedes-Benz, USA.

MR. WILLIAMS: And Doug Williams, Barnes & Thornburg, Liaison Counsel for the Defendants.

THE HONORABLE JUDGE DONOVAN FRANK: What I would

1 suggest the record should reflect, that we have been meeting
2 in a conference room. And rather than go to the courtroom,
3 since we have discussed modification of a previously agreed
4 to, with some modifications, pretrial schedule, with some
5 updates on the deadline dates, some other agreements on a
6 proposed date to get together here, rather -- I will just
7 start with you, Mr. Williams, because you kind of led things
8 off earlier this morning.

9 At the end, I will wait until we have got anything
10 that any of you wish on the record, just to confirm the
11 status of the case today. And then after Judge Rau has
12 anything, when you are each done, I will just confirm the
13 next day we are due back in here, since we have agreed it
14 won't be October or November. And maybe I will indicate now
15 the next date then that would create was December 5th that
16 we would be back here. Unless we get close to that date.
17 And I candidly acknowledge we didn't discuss this earlier
18 off the record; but, if one or more of you or all of you are
19 saying, well, December is going to be much like -- could be
20 much like October and November. Then unless the Court wants
21 us here, we are not so sure. But, right now that date would
22 be December 5th, the way we set these schedules up. So,
23 unless we change that today, that is the way it will -- I
24 mean, that would be the next time we got together here in
25 the Twin Cities.

1 MR. FARNEY: To the point earlier made about the
2 efficiency and saving of the Judges' time, I think we would
3 agree that the December 5th date probably -- we won't be
4 much further along to really add anything there, unless we
5 need to contact the Court, which we can do it in the same
6 procedure before. Mr. Williams and I will meet by phone a
7 week before that date and then let you know if we need a
8 conference. But, I think it is the same.

9 THE HONORABLE JUDGE DONOVAN FRANK: What is the
10 sense of the group, Mr. Williams? Anyone else who wants to
11 have their say?

12 MR. WILLIAMS: Anybody have any thoughts on that?
13 My sense is that that would probably be accurate, that if we
14 needed something, Judge, we could call you, especially in
15 view of the fact that just a few weeks later we will be
16 teeing things up to come back in with Magistrate Judge
17 Rau --

18 THE HONORABLE JUDGE DONOVAN FRANK: Well, why
19 don't we do this? Why don't we, absent an objection from
20 His Honor here, or anyone else, why don't we just set our
21 next conference, like we have had today on --

22 THE HONORABLE MAGISTRATE JUDGE RAU: It will be
23 that week of January 28th.

24 MR. FARNEY: That is fine.

25 THE HONORABLE JUDGE DONOVAN FRANK: The 28th. I

1 think we can do that expeditiously so it didn't interfere
2 with -- why don't we just do that, build that into the
3 schedule now. And then if something happens where one or
4 more of you are saying, well, that sure seemed like the
5 thing to do back in September, but we really need access to
6 the Court before then, then we will designate that as the
7 next get together. So, all right?

8 THE HONORABLE MAGISTRATE JUDGE RAU: Okay.

9 THE HONORABLE JUDGE DONOVAN FRANK: So then I
10 guess I interrupted you.

11 MR. WILLIAMS: Your Honor, rather than going
12 through each of the individual dates, what I would propose
13 is that --

14 THE COURT: I was hoping you wouldn't do that, but
15 you go right ahead.

16 MR. WILLIAMS: We would then just amend the
17 scheduling order as we discussed earlier and we will get
18 that then to Plaintiffs. And once we have reached an
19 agreement in the next couple of days on that, we will submit
20 it to the Court.

21 THE HONORABLE JUDGE DONOVAN FRANK: That seems
22 acceptable. Is that acceptable to everyone here?

23 MR. FARNEY: Yes, Your Honor.

24 THE COURT: Plaintiffs' point of view? Anything
25 you would like to put on the record?

1 MR. FARNEY: No, nothing.

2 MR. ANDERSON: Lifting of the stay on discovery.

3 THE HONORABLE JUDGE DONOVAN FRANK: Thank you for
4 the reminder. The record would reflect that if we go back
5 to a prior Order that the Court entered, pending -- there
6 was some motion practice and pending a decision or two by
7 the Court, not dissimilar from other cases, we had stayed
8 discovery. I will vacate that stay at that time so we can
9 proceed consistent with this order that has been essentially
10 agreed upon. So, that is vacated and we will -- I will
11 probably just do -- unless there is something else that
12 needs to do in these days of e-filing, a formal order, I
13 will have my calendar clerk do a text entry only order just
14 vacating that, unless for some reason there needs to be a
15 follow-up formal order done. There will be a docket entry
16 that will make that clear, effective today. So --

17 MR. FARNEY: The only other point, Your Honor, was
18 we have agreed that the parties are going to meet and confer
19 over the next 30 days or so on an exchange of some informal
20 information about -- relevant to damages, without that
21 constituting a full damages discovery process to facilitate
22 the mediation with Judge Rau in January. And the parties
23 will get back to Judge Rau with what we have agreed on or if
24 we have a difference of opinion, we will get back to him on
25 that.

1 THE HONORABLE MAGISTRATE JUDGE RAU: And what I
2 understood is that over and above the agreement about the
3 sort of informal exchange about damages discovery, that the
4 parties were going to confer with each other about what they
5 thought they would collectively provide to me in
6 anticipation of four days of settlement conference that I
7 have set aside for now, January 28th through 31st, 2013.

8 But, what they would collectively provide me, and
9 or to the extent appropriate, provide me on an ex parte
10 confidential basis to educate me in anticipation of this
11 settlement conference. I will probably abstain from issuing
12 a formal order with respect to the settlement conference
13 until later in October, after you have perhaps edified me a
14 little bit. Because I may tailor that order to conform to
15 some of the information or issues that you raised with me,
16 rather than just sort of sending out the canned order.

17 MR. FARNEY: And do you -- is your practice that
18 you would like a mediation brief from both sides?

19 THE HONORABLE MAGISTRATE JUDGE RAU: Well, that is
20 what I -- when I issue that order, I will direct you what I
21 want. In part, I want you to educate me on what you think
22 would be useful to tell me first, and then I will probably
23 confer with Judge Frank and his chambers, as well as my
24 colleagues in my chambers about what additional information
25 we may ask from the parties, and include that in the order.

1 The order will be very specific in terms of what my
2 expectations are from you.

3 MR. WILLIAMS: Adding to that, we also had agreed
4 that what we would do around that same time period in one
5 month is to give you a report on our proposal for
6 streamlined discovery dispute resolution. And so, we will
7 also conclude that discussion in advance, and we will put
8 that in the mix of things that we report to you in a month.

9 THE HONORABLE MAGISTRATE JUDGE RAU: Okay, great.

10 THE HONORABLE JUDGE DONOVAN FRANK: Anyone else
11 want to be heard?

12 MR. BARNEY: I would like to just ask for
13 clarification. I may not have heard Mr. Farney from way
14 down here at the end of the table. I do understand the
15 parties have discussed the possibility of obtaining
16 information prior to these settlement conferences at the end
17 of January. You said something about 30 days and I wasn't
18 sure if you meant that that is in the next 30 days or 30
19 days -- within the 30-day period, itself?

20 MR. FARNEY: I was talking about exchanging
21 information. I think we would agree in the next 30 days or
22 so, we would agree on what we are going to exchange and the
23 framework. And then the timing, I guess, could be part of
24 that.

25 MR. BARNEY: Right.

1 MR. FARNEY: That is what I meant to say.

2 MR. WILLIAMS: And just for the sake of clarity,
3 why don't we, since today is the 12th, set Friday, October
4 the 12th, as a date where we will get everything done that
5 we are going to do by reaching agreement on these various
6 points that are open. And we can discuss that in the next
7 couple of days and kick that off. But, our target date then
8 for submission of our reports to Magistrate Judge Rau will
9 be October 12th. Agreeable?

10 MR. FARNEY: Yes that is fine.

11 THE HONORABLE JUDGE DONOVAN FRANK: Counsel,
12 anything further before we adjourn?

13 MR. FARNEY: No, Your Honor.

14 THE COURT: Thank you all. We will stand
15 adjourned.

16 (Adjournment.)

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18 * * *

19
20 I, Jeanne M. Anderson, certify that the foregoing
21 is a correct transcript from the record of proceedings in
22 the above-entitled matter.

23
24 Certified by: s/ Jeanne M. Anderson
25 Jeanne M. Anderson, RMR-RPR
Official Court Reporter